

SUBLEASE AGREEMENT

WHEREAS, the County of San Luis Obispo (hereinafter referred to as "County") owns real property in the unincorporated area of San Luis Obispo known as the El Chorro Regional Park; and

WHEREAS, the Friends of the San Luis Obispo Botanical Garden (hereinafter referred to as "Sublessor") is a 501(c)(3) non-profit corporation whose goal is to develop a botanical garden for public use and recreation and to educate the public in the flora of Mediterranean climates around the world and drought- tolerant plant species; and

WHEREAS, the location of El Chorro Regional Park on scenic Highway One with proximity to Cuesta College and Cal Poly is ideal for the promotion of recreation, tourism, and education; and

WHEREAS, the goals as stated in the Master Plan for the San Luis Obispo Botanical Garden which was presented to the County Board of Supervisors on November 16, 1999 (hereinafter referred to as "Master Plan") are consistent with the mission of County Parks; and

WHEREAS, the County, recognizing the unique contribution of the Botanical Garden to the vitality of the area, on September 20, 1994 signed a long-term Use Permit Agreement with Sublessee to allow them to develop a botanical garden on approximately 150 acres of County-owned property within El Chorro Regional Park; and

WHEREAS, in lieu of monetary rent, said Use Permit Agreement required the Botanical Garden to make specific improvements to the property and to maintain nursery stock as designated by the County to be used for County Parks projects; and

WHEREAS, the Botanical Garden fulfilled their obligations of the Use Permit Agreement during the first 12 years of the term and has become an important partner to County Parks in offering recreational opportunities; and

WHEREAS, on February 28, 2006 The County of San Luis Obispo, as Lessor, entered into a 99-year term lease agreement with Friends of the San Luis Obispo Botanical Garden, as Lessee, (the "Original Lessee") in order to ensure the longevity of the Botanical Garden and to provide the opportunity for the Botanical Gardens to continue to develop and qualify for a broader array of funding. The leasehold consisted of the 150.46-acre Botanical Garden Site depicted on Exhibit "A" (the "Botanical Garden Site").

WHEREAS, Friends of the San Luis Obispo Botanical Garden, subject to the approval of the County of San Luis Obispo, now wishes to hereby sublease a portion of the Botanical Garden Site leasehold to Latitude 35, a California B corporation, in order to allow for the development and maintenance of a recreational zip line at the Botanical Garden Site, which will serve the public interests, provide public recreational opportunities, and further provide additional funding resources for the continued use, improvement, and maintenance of the Botanical Garden Site leasehold.

WHEREAS, this sublease agreement is in the best interest of the public;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

THIS SUBLEASE AGREEMENT is entered into between the Friends of the San Luis Obispo Botanical Garden, a non-profit corporation, hereinafter referred to as "Sublessor,"; and, Latitude 35, a California benefit corporation ("B"), hereinafter referred to as the "Sublessee". Sublessor and Sublessee acknowledge and agree that effectiveness of this sublease is subject to the prior written consent and formal approval of the County of San Luis Obispo, California (the "Master Lessor").

1. Premises: The subleased premises, for the term and upon the conditions hereinafter set forth, consist of portions of the Botanical Garden Site property, shown as the "zipline" on Exhibit "B" (hereinafter referred to as "Premises,") as attached hereto and incorporated herein by reference. For purposes of this Sublease, the Premises shall be deemed to be a fifty-foot wide corridor lying 25 feet on either side of the green line identified as the "zipline" on Exhibit "B" (the "Zipline Corridor"). Sublessor reserves the right to utilize the Premises for all reasonable purposes, other than those which unreasonably interfere with Sublessee's construction, maintenance and operation of a recreational zipline, and related improvements, accessories and facilities (collectively the "Zipline Project") within the Zipline Corridor.

2. Eagle Peak Trail: Sublessor and Sublessee agree and acknowledge that Eagle Peak Trail is a public trail that traverses the northeast section of the Botanical Gardens Property and outside the Zipline Corridor. Sublessee agrees and acknowledges that the public shall have access to the Eagle Peak Trail, and that Sublessee's Zipline Project shall not interfere with public's use of the same.

3. Ingress and Egress: Sublessee shall have the right to reasonable access, ingress and egress to the Zipline Corridor through the Botanical Garden Site, at locations subject to the prior written consent and approval of the Sublessor. Additionally, Sublessee shall have the right to access, construct, install, improve, maintain, operate, and repair the Zipline Project improvements. The location of all access areas, and any construction staging areas outside of Zipline Corridor shall similarly be subject to the Sublessor's prior written consent and approval. The consent and approval of the Sublessor as herein required shall not be unreasonably withheld.

4. Term: The term of this sublease agreement shall be for an initial term of ten (10) years, unless earlier terminated pursuant to the provisions of this Sublease. The term shall commence upon written consent and approval of this Sublease by the San Luis Obispo County Board of Supervisors (the "Effective Date").

5. Rent: As consideration for the use and occupancy of the Premises, Sublessee shall pay Sublessor, on a quarterly basis, the amount equal to the following percentages of the gross income and revenues generated by Sublessee's operation of the Zipline Project, including all income and revenues generated by all associated approved commercial activities conducted by Sublessee at the Premises or within the Botanical Garden Site, including but not limited to food and beverage sales, clothing and active gear sales, photograph and video sales, and the income generated by the sale of all other approved goods and/or services.

- a) First Year following the Effective Date: 2%;
- b) Second Year following the Effective Date 3%;
- c) Fourth Year following the Effective Date 4%;
- d) Fifth Year and thereafter following Effective Date 5%

Sublessor shall have the right to terminate this sublease, upon thirty (30) days notice, if Sublessee has not paid rent accruing hereunder within the initial fifteen (15) months following the Effective Date. Quarterly rent payments are due on the last day of the following months: March, June, September and December of each Calendar year during the term.

6. Termination of Lease Term: Sublessee's status as a benefit ("B") corporation is part of the valuable consideration exchanged and supporting with this sublease. It is the express intention of the Sublessor and Sublessee that prior to the end of the initial ten (10) year term of this sublease that Sublessee will be paying rent and making philanthropic contributions to Sublessor in an aggregate amount of not less than \$250,000.00 annually (the "Anticipated Total Benefit Amount"). To the extent that at the end of the initial term of this sublease, the Sublessee has not then paid the Anticipated Total Benefit Amount to Sublessor during the last full calendar year of the term, then this sublease shall terminate at the end of the initial ten (10) year term, and at Sublessor's exclusive election, Sublessee shall either (a) surrender the Premises and the Zipline Project to Sublessor for no additional consideration, or (b) remove the Zipline Project from the Botanical Garden Site, and surrender the Premises to the Sublessor, in its original condition as existed upon the Effective Date, at Sublessee's cost and expense.

7. Extensions of Sublease Term: Provided that Sublessee has paid the Anticipated Total Benefit Amount, during the twelve months of the last calendar year of the initial term, the term of this sublease shall be extended, until the end of the first full calendar year following the expiration of the initial term, and shall thereafter be similarly extended on an annual basis provided that by the end of each such calendar year, the Sublessee has paid the Sublessor an amount equal to the Anticipated Total Benefit Amount as required to be paid under paragraph 6, increased by three percent (3%) for each calendar year that the term has been extended hereunder. By way of explanation, at the end of the first calendar year following the termination of the initial term, that amount would be 103% of the Anticipated Total Benefit Amount originally required to be paid under Paragraph 6, and thereafter the annual total amount payable (including quarterly rents due as provided under paragraph 4) would increase by three percent (3%) over the amount required to be paid for the prior calendar year. Except as herein provided, this sublease shall terminate and not be further extended in the event Sublessee fails to pay Anticipated Total Benefit Amount as adjusted on an annual basis. Nothing herein shall otherwise be deemed to extend this sublease beyond the term of the Original Lease between the Sublessor and the County of San Luis Obispo. Notwithstanding any extension hereunder, this sublease shall terminate upon the termination of the Original Lease.

8. Use of Premises: Sublessee shall have the right to operate the Zipline Project for public recreational purposes and as hereafter further described. Any additional operations, are subject to the prior written approval of the Sublessor and of the County General Services Director ("Director") or her/his designee. Such request shall be reviewed in an expeditious manner by the Sublessor and Director and permission shall not be unreasonably withheld. In the event that any additional proposed activity or special event causes or creates a reasonable concern for life, health, safety or compatibility with the surrounding area, The Director shall have the right to terminate authorization for such activity or event.

8.1 After construction of the Zipline Project is completed, Sublessee shall have the right to conduct related, incidental activities such as a gift shop/book store, photograph and video production and sales, and on-site eating facilities, as are customarily associated with the operation of a Zip Line business. Said activities are contingent upon fulfilling all requirements as defined in this Sublease. On-site eating facilities shall include a kitchen for the preparation and serving of food and shall be in the nature of a coffee shop, sandwich shop or cafe serving sandwiches, salads, snacks, soft drinks and similar items for the convenience of guests, visitors, patrons, volunteers, and employees of the Zipline Project or the Botanical Garden. The location of all such activities and/or related improvements are subject to Sublessor's prior written consent and approval.

8.2 No alcoholic beverages shall be sold or consumed on the Premises without the express written consent of the Director, or his designee. Alcoholic beverages may only be served by Sublessee, caterers, or others in conjunction with special events (i.e., weddings, receptions, festivals, concerts, fundraisers, etc.) subject to all permits required by law first being obtained by Sublessee.

8.3 Except as contemplated in this sublease, Sublessee shall not have the right to utilize the Premises for any other commercial business operation or for any purpose other than as designated herein or otherwise first approved by the Sublessor and Director, or their respective designee.

8.4 Sublessee shall, at Sublessee's cost and expense, obtain emergency medical care for any member of the public who is in need thereof because of illness or injury occurring on the Premises or otherwise related to the operation of the Zipline Project or Sublessee's related and/or approved activities at the Botanical Garden Site.

8.5 Sublessee understands and acknowledges that County owns and operates a water tank, water main and related water facilities that traverse on and over the Botanical Garden Site. Sublessee agrees and acknowledges that said water facilities are the property and responsibility of County and Sublessee shall not disturb or conduct any activity which would interfere or interrupt with said facilities. County or its agents shall, at all times, have access to said water facilities for inspection, repair, maintenance, or other necessary activities.

9. Admission Fees: Sublessee shall have the right to charge admission or other fees for access to, and use of, the Zipline Project.

10. Water Allotment: Sublessee acknowledges that the County furnishes water to Sublessor but the County cannot guarantee a specific quantity of water for the use of the Sublessor or Sublessee. If the amount of water Sublessor receives from the County is not adequate for the Sublessee's needs to support the uses herein contemplated, then Sublessee shall have the right, at its option, to terminate this sublease upon a ninety (90) day written notice to Sublessor. The Sublessee may make any other reasonable arrangements for the provision of water at its own expense. Upon such termination, Sublessor shall have the election described in paragraph 6.

11. Utilities: Sublessor shall not be required to furnish any service to the Premises, including but not limited to heat, water, electrical, natural gas and garbage disposal, and shall not be liable for any failure of water supply or of any service by any utility. Sublessee shall be responsible

for all costs relative to the installation and use of utility services. Sublessee shall place all utilities in the name of Sublessee, and agrees to promptly pay all charges for all utilities and services used or charges imposed in or about or supplied to the Premises, and shall indemnify the Sublessor and/or the County against any and all liability on such accounts. To the extent that additional utility installations are required, such installations and their location shall be subject to Sublessor's prior written consent and approval.

12. Maintenance: Sublessee, at Sublessee's sole cost and expense, shall maintain and keep the Premises and every structural portion of the Zipline Project and all of Lessee's associated improvements in a good state of repair during the term of this sublease and shall not, at any time, commit or suffer to be committed any waste, nuisance, or unlawful act at the Botanical Garden Site. County shall have the right to inspect the Premises at any reasonable time to protect the health, safety and welfare of individuals using the Premises. Sublessee shall promptly repair or correct any problem identified in writing by the Director, or his designee. Should Sublessee fail or neglect to make such repairs as necessary to;

- (a) protect the health, safety or welfare of individuals using the Premises; and/or
- (b) protect the financial value or worth of facilities and improvements on the Premises

The Director, or his designee may, after thirty (30) days written notice to Sublessee, make said repairs and charge Sublessee for same and Sublessee shall reimburse County for said costs upon demand.

13. Signs: Sublessee, at its sole cost, shall have the right to place, construct and maintain a sign at the Botanical Garden's entrance, advertising its business on the Premises. However, no signage shall be installed without prior written consent of the Sublessor and the Director or their respective designee. Any sign that Sublessee has the right to place, construct, and maintain shall comply with all laws, and Sublessee shall obtain any approval required by all rules, regulations, ordinances and laws.

14. Construction on Premises: Any construction and/or capital improvements to be undertaken hereunder, shall be administered as follows:

(a) Sublessee shall have the right, at Sublessee's sole cost and expense, to construct and/or improve the Zipline Project subject to prior written approvals by the Sublessor and the Director or their respective designees as herein described.

(b) Any contractor or subcontractor responsible to Sublessee shall at all times be in compliance with the insurance requirements specified in Paragraph 17.

(c) Sublessee agrees to submit to the Sublessor and Director, for review and approval, all plans including specifications, working drawings, and other information required by the Director covering the projects to be accomplished by Sublessee. Said plans shall be submitted to the Director for County approval at least thirty (30) days in advance of the initiation of any such projects. If the Director objects to all or any portion of such plans, Director shall state the objections specifically, and the Sublessee shall make the changes specified and resubmit the plans as revised for the Directors approval as herein provided. No improvement or alteration shall be made to the Premises or any portion thereof without the submission to and prior written approval of the plans by the Sublessor, the Director or their respective designee. In

addition, the following shall apply to any construction or improvement to the Premises or the Botanical Garden Site:

(i) Nothing herein shall be construed to be a waiver of formal County building and land use review procedures and Sublessee shall comply fully with same, at Sublessee's sole cost and expense.

(ii) Sublessee shall install, maintain, repair and/or otherwise provide for parking facilities and construct any drives and or roadways as required for any proposed development, at Sublessee's cost and expense, and at locations first approved by Sublessor and the Director.

(iii) Sublessee shall be responsible, at Sublessee's cost and expense, for any environmental determination and or other studies and reviews. If an E.I.R. or C.E.Q.A. or other environmental review is needed, Sublessee shall comply at Sublessee's sole cost and expense.

(iv) County and Sublessor shall have the right to make any improvements to the Premises as provided such improvements shall not be inconsistent with the Sublessee's use of the Premises. Nothing contained in this agreement shall be deemed or construed in any way to limit the County's authority to exercise any right or power concerning the utilization of the Premises. Sublessee's use of the Premises shall be subordinate to the County's use, however County shall notify Sublessee of any intended use of the Premises by the County and any such use shall not be inconsistent with nor interfere with Sublessee's use of the Premises.

15. Ownership of Improvements: The ownership of all approved improvements constructed by the Sublessee, if any, shall be subject to the provisions of paragraph 5 upon expiration of this sublease. In the event Sublessee fails to remove any or all of the alterations, additions, or improvements required by Sublessor, Sublessor or the County may remove same and charge Sublessee for the cost of such removals and Sublessee hereby agrees to pay any and all such costs upon demand.

16. Protection on Premises: Sublessee agrees to take all reasonable precautions to protect Premises and the Zipline Project from damage, theft, vandalism and other such hazards.

17. Insurance: Sublessee shall obtain and maintain for the entire term of the Agreement and Sublessee shall not perform any work under this Agreement until after he has obtained insurance complying with the provisions of this paragraph. Said policies shall be issued by companies authorized to do business in the State of California. Sublessee shall maintain said insurance in force at all times. The following coverage with the following features shall be provided:

(a) Commercial Liability Insurance: Sublessee shall maintain in full force and effect for the period covered by this Agreement, commercial liability insurance. This insurance shall include, but shall not be limited to, comprehensive general and automobile liability insurance providing protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from any act or occurrence arising out of Sublessee's operations in the performance of this Agreement including, without limitation, acts involving vehicles. The policy shall provide not less than single limit coverage applying to bodily and personal injury, including death resulting there from, and property damage in the total amount of One Million Dollars (\$1,000,000). The following endorsements must be attached

to the policy:

- (i) If the insurance policy covers on an "accident" basis, it must be changed to "occurrence."
- (ii) The policy must cover personal injury as well as bodily injury.
- (iii) Blanket contractual liability must be afforded and the policy must contain a cross liability or severability of interest endorsement.

(b) Workers' Compensation Insurance: In accordance with the provisions of sections 3700 *et seq.*, of the California Labor Code, if Sublessee has any employees, Sublessee is required to be insured against liability for workers' compensation or to undertake self insurance. Sublessee agrees to comply with these provisions before or upon the Effective Date.

(c) Additional Insureds to be Covered: The commercial general liability policies shall name Sublessor and the "County of San Luis Obispo, its officers, employees, and agents" as additional insureds. The policy shall provide that the Sublessee's insurance will operate as primary insurance and that no other insurance maintained by the Sublessor, the County, or additional insureds will be called upon to contribute to a loss hereunder.

(d) Certification of Coverage: On or before the Effective Date, Sublessee shall furnish Sublessor and the County with the following for each insurance policy required to be maintained by this Agreement:

(i) A copy of the Certificate of Insurance shall be provided. The certificate of insurance must include a certification that the policy will not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to the additional insureds.

(ii) A Workers' Compensation certificate of insurance must be provided.

(iii) Upon written request by the County, the Sublessee shall provide a copy of the complete insurance policies.

(iv) Approval of any insurance by County or Sublessor shall not relieve or decrease the extent to which the Sublessee may be held responsible for payment of damages resulting from Sublessee's services or operations under this sublease. Further, neither County's or Sublessor's act of acceptance of an insurance policy does not waive or relieve Sublessee's obligations to provide the insurance coverage required by the specific written provisions of this Agreement.

(e) Effect of Failure or Refusal: If Sublessee fails or refuses to procure or maintain the insurance required by this contract, or fails or refuses to furnish County and Sublessee with the certifications required by Subparagraph (d). above, County and/or Sublessor shall have the right, at their option, to forthwith terminate this Sublease for cause. Upon such termination, Sublessor shall have the election described in Paragraph 6.

16. Indemnification: Sublessee shall defend, indemnify and hold harmless the Sublessor, and County, their officers and employees from any and all claims and demands, costs, expenses, judgments, attorney fees or liabilities that may be asserted by any person or entity that arise out of or in connection with the acts or omissions relating to the performance of any obligation or duty provided for or relating (directly or indirectly) to this sublease, the tenancy created under this

Lease, or the use or operations of the Zipline Project, or the Premises hereunder. However, this indemnity will not extend to any claims or losses arising out of the sole negligence or willful misconduct of the Sublessor, or County, or their officers and employees.

The preceding paragraph applies to any theory of recovery relating to said act or omission by the Sublessee, or its agents, employees or other independent contractors directly responsible to Sublessee, including, but not limited to, the following:

- (i) Violation of statute, ordinance, or regulation.
- (ii) Professional malpractice.
- (iii) Willful, intentional or other wrongful acts, or failures to act.
- (iv) Negligence or recklessness.
- (v) Furnishing of defective or dangerous products.
- (vi) Premises liability.
- (vii) Strict liability.
- (viii) Inverse Condemnation.
- (ix) Violation of civil rights.

(x) Violation of any federal or state statute, regulation, or ruling resulting in a determination by the Internal Revenue Service, California Franchise Tax Board or any other California public entity responsible for collecting payroll taxes, when the Sublessee is not an independent contractor.

It is the intent of the parties to provide the Sublessor and the County the fullest indemnification, defense, and hold harmless rights allowed under the law. If any word(s) contained herein are deemed by a court to be in contravention of applicable law, said word(s) shall be severed from this Sublease and the remaining language shall be given full force and effect.

17. Taxes: During the term of this Sublease, Sublessee hereby agrees to pay, prior to delinquency, all taxes and assessments, including both general and special, levied or assessed against the Premises and in connection with the Premises, the Zipline Project and Sublessee's operation thereof, including without limitation, taxes on Sublessee's possessory interest hereunder or in the Premises, and taxes or assessments on all structures, improvements, and fixtures now or hereinafter existing on the Premises or at the Botanical Gardens, and on any personal property situated in, on, or about the Premises, or in, on or about any Zipline Project structures or related commercial improvements at the Botanical Garden Site. Sublessee is hereby informed that a possessory interest subject to property taxation may be created by this sublease and that the party to whom the possessory interest is vested (Sublessee) may be subject to the payment of property taxes levied on such interest. Sublessee hereby agrees to pay such taxes prior to delinquency.

18. Inspection of Premises: The Sublessor, and the County, (by the Director), or their respective designee, shall have the right of ingress and egress at any reasonable time to inspect, investigate and survey the Premises the Zipline Project and all related improvements as they deem necessary, and the right to do any and all work of any nature for the preservation and maintenance of the Botanical Garden Site or improvements thereon without unreasonably interfering with Sublessee's use of the Premises and/or operation of

the Zipline Project.

19. Assignment: Sublessee shall neither transfer nor assign this sublease or any property on the Premises, nor sublet the Premises or any part thereof or any property thereon, nor grant any interest, privilege, or license whatsoever in connection with this sublease without the prior written consent of the Sublessor and the County.

20. Environmental Matters/Covenants Regarding Hazardous Materials: Sublessee shall at all times and in all respects comply with all federal, state and local laws, ordinances and regulations ("Hazardous Materials Laws") relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, disposal or transportation of any oil, flammable explosives, asbestos, urea formaldehyde, radioactive materials or waste, or other hazardous, toxic, contaminated or polluting materials, substances or wastes, including without limitation, any "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under such laws, ordinances or regulations (collectively, "Hazardous Materials"). Sublessee shall, except in the event of Sublessor's gross negligence, indemnify, defend, protect, and hold Sublessor and the County and their respective officers, directors, employees, agents, attorneys, successors and assigns, free and harmless from and against any and all claims, liabilities, penalties, forfeitures, losses or expenses or death of or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by:

(a) The presence in, on, under or about the Premises or discharge in or from the Premises of any Hazardous Materials or Sublessee's use, analysis, storage, transportation, disposal, release, threatened release, discharge or generation of Hazardous Materials to, in, on, under, about or from the Premises, or

(b) Sublessee's failure to comply with any Hazardous Materials Law. Sublessee's obligations hereunder shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary repair, cleanup or detoxification or decontamination of the Premises, and the preparation and implementation of any closure, remedial action or other required plans in connection therewith caused by Sublessee and shall survive the expiration or earlier termination of the term of this sublease. For purposes of the release and indemnity provisions hereof, any acts or omissions of Sublessee, or by employees, agents, assignees, contractors or subcontractors of Sublessee or others acting for or on behalf of Sublessee (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to Sublessee.

21. Condemnation: If the whole of the Premises or the Zipline Project shall be taken or condemned by any competent authority under power of eminent domain for a public or a quasi-public use or purpose, then the leasehold estate hereby created shall cease and terminate as of the date actual physical possession of the Premises is taken by the condemnor. All compensation and damages awarded for such total taking shall belong to and be the sole property of County, provided, however, that Sublessee shall be entitled to receive a sum attributable to the taking of damage to Sublessee's equipment, fixtures, or any improvements to the Premises, the Zipline Corridor and/or the Botanical Garden Site, which Sublessee would have had, but for the condemnation, the right to remove on expiration or sooner termination of this Lease; Upon

termination of the Sublease by a total taking all rental and other charges payable by Sublessee to or on behalf of County under the provisions of this Sublease shall be paid up to the date on which actual physical possession of the Premises shall be taken by the condemnor, and the parties hereto shall thereafter be released from all further liability in relation thereto.

In the event that there shall be partial taking of the Premises, including of the Zipline Project and/or related improvements during the lease term under the power of eminent domain, this sublease shall terminate as to the portion of the Premises so taken on the date when actual physical possession of said portion is taken by the condemnor. At Sublessee's option, this Lease shall continue in force and effect as to the remainder of the Premises; without abatement or reduction in rent or other consideration, payments or contributions due hereunder. In the event of such partial taking, all compensation and damages for such partial taking shall belong to and be the sole property of County, provided, however, that Sublessee shall be entitled to receive any award made for the taking of, or damage to, Sublessee's equipment, fixtures, and any improvements made by Sublessee to the Premises or the Botanical Garden Site which Sublessee would have had, but for the condemnation, the right to remove on expiration or sooner termination of this Sublease. In the event that this Sublease is retained as to the portion of the Premises not condemned, any award made for alteration, modifications or repairs which may be reasonably required in order to place the remaining portion of the Premises not taken in a suitable condition for the continuance of Sublessee's tenancy shall belong to and be the sole property of Sublessee.

22. Destruction of Premises: Should any matter or condition beyond the control of the parties hereto, such as war, public emergency, or calamity, fire, earthquake, flood, act of God, strike, or any other labor disturbance, prevent performance of this sublease in accordance with the rights and privileges granted herein, this Sublease shall immediately be terminated and the Sublessor shall be under no legal obligation to the Sublessee by reason of said matter or condition.

Should any aforementioned matter or condition create eligibility for Federal, State, or any other governmental jurisdictional relief assistance and/or aid, both parties agree to take all reasonable steps necessary to procure such assistance and/or aid, in their respective capacities at the time of such application.

23. Law: This Lease Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this sublease Agreement shall be determined and governed by the laws of the State of California.

24. Sublessee's Responsibility for Compliance: Sublessee shall at all times observe and comply with, and shall cause all his agents, employees and sub-contractors to observe and comply with all present and future laws, statutes, ordinances, regulations, rules, resolutions, or other binding enactments of any governmental authority, now or at any time during this sublease and any extensions thereof. If any future laws, rules, regulations or ordinances are passed by the County and said legislative enactment has any impact fiscal or otherwise on Sublessee, and if Sublessee does not make a timely objection to County during the course of legislative process, Sublessee will be deemed to have waived any right to object at a later time and waives all damages flowing therefrom.

25. Venue: The duties and obligations of the parties created hereunder are performable in San Luis Obispo County, and such county shall be the venue for any action or proceeding that may be brought or arise out of or in connection with or by reason of this Lease.

27. Employment Status: Neither Sublessee nor any of Sublessee's agents or contractors are or shall be considered to be employees or agents of the Sublessor or the County in connection with the performance of Sublessee's right and obligations under this sublease.

28. Non-Discrimination: Sublessee and County shall not discriminate against any person or class of persons in violation of the Civil Rights Act of 1964 as amended or any other applicable laws prohibiting discrimination in the use of the Premises.

29. Drug Free Workplace: Sublessee and Sublessee's employees shall comply with County's policy of a drug free workplace. Neither Sublessee nor Sublessee's employees shall unlawfully manufacture, distribute, dispense, possess, or use controlled substances, including but not limited to marijuana, heroin, cocaine, methamphetamine, or amphetamines at any of Sublessee's facilities or County facilities or work sites. If any employee of Sublessee is found to be under the influence of or in possession of any illegal substance at or on the Premises, that employee may not return to the Premises. If Sublessee becomes aware that any of Sublessee's employees, during the course of their employ with Sublessee, are convicted or plead nolo contendere to a criminal substance abuse statute, Sublessee shall be responsible for notifying the Sublessor and the Director within seventy-two (72) hours of becoming aware of said conviction or plea. Violation of this notification provision shall constitute grounds for termination of this sublease.

30. Americans with Disabilities Act: The Sublessee acknowledges the passage of the Americans With Disabilities Act of 1990, 42 U.S.C. sect. 12101 et seq., ("ADA"). Sublessee, as required by law, hereby agrees and is required to install any and all equipment, perform any and all alterations, improvements or modifications to the Premises such that the Premises and improvements associated with the Zipline Project are in strict compliance with ADA requirements.

31. Holding Over: In the event that Sublessee shall hold over after expiration of the term of this Lease Agreement or any extension or renewal thereof, with the consent, express or implied, of County, such holding over shall be deemed merely a tenancy from month-to-month on the terms, covenants, and conditions, so far as applicable, and subject to the same exceptions and reservations, as herein contained, until such tenancy is terminated in a manner prescribed by law.

32. Notices: All notices shall be given in writing personally or by depositing the same in the United States mail, postage prepaid, or by certified or registered mail, return receipt requested, and addressed to

Sublessor at:

Friends of the San Luis Obispo Botanical Garden

3450 Dairy Creek Road

San Luis Obispo, California, 93405

Attention: President, San Luis Obispo Botanical Garden Board of Directors

Sublessee at:
Latitude 35
2773 Crocket Circle
Los Osos, CA 93402

And to the County at:
Department of General Services
1087 Santa Rosa
San Luis Obispo, California, 93408
Attention: Director

Any of the foregoing entities can change address by notifying the other party in writing.

33. Breach: Notwithstanding any other provisions contained herein, either the Sublessor or the Director may cancel and terminate this sublease if Sublessee shall fail, neglect or refuse to perform and obey any term or condition set forth in this sublease, after having received written notice of thirty (30) days to do so, unless such failure, neglect or refusal by nature cannot be remedied within thirty (30) days of said notice and Sublessee has within thirty (30) days of the notice commenced and does thereafter continue diligent efforts to remedy such failure, neglect or refusal. Any waiver by the Sublessor or County of any failure by Sublessee to comply with the terms and conditions of this Lease shall not be construed to be a waiver of any similar or other failure by Sublessee to comply with any other term or condition hereof.

34. Waiver of Claim: Sublessee hereby waives any claim against the Sublessor, the County, or their respective officers, agents or employees for damage or loss caused by any suit or proceeding directly or indirectly attacking the validity of this sublease, or any part thereof or by any judgment or award in any suit or proceeding declaring this sublease null, void or voidable, or delaying the same or any part thereof from being carried out.

35. Provisions Deemed Covenants and Conditions: The parties hereto agree that all the provisions hereof are to be construed as covenants and conditions as though the words importing such covenants and conditions are used in each instance, and that all of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representative, successors and assigns.

36. Severability: The invalidity of any provision of this sublease shall not affect the validity, enforceability of any other provision of this sublease.

37. Entire Agreement and Modifications: This Lease Agreement embodies the whole Sublease between the parties hereto as it pertains to the subject Premises the Zipline Project and the Botanical Garden Site and there are no promised terms, conditions, or obligations referring to the subject matter hereof, other than as contained herein. Any alterations, changes or modifications to this Sublease must be in writing and executed by both Sublessee, the Sublessor, and the County.

Sublessor:

Friends of the Botanical Garden

By: _____

Sublessee:

Latitude 35

By: _____